

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEVEN D. MCDONALD,

Plaintiff,

v.

AIJAZ KURSHID, *et al.*,

Defendants.

No. C04-5736RJB-JKA

ORDER

This matter comes before the Court under Local General Rule 8(c). Plaintiff has filed a “Motion to Recuse Judge Kelley [Arnold] And Transfer to Different Magistrate” (Dkt. # 47) and a “Second Motion to Recuse Judge Kelley [Arnold] Please” (Dkt. # 49). The Honorable J. Kelley Arnold, United States Magistrate Judge, declined to recuse himself voluntarily and the matter was referred to the Chief Judge for review. Dkt. # 94. Plaintiff’s motion is therefore ripe for review by this Court.

Section 455 of title 28 of the United States Code governs the disqualification of a district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge

ORDER

1 shall proceed no further therein, but another judge shall be assigned to hear such
2 proceeding. The affidavit shall state the facts and the reasons for the belief that
bias or prejudice exists.

3 A judge must recuse himself if a reasonable person would believe that he is unable to be
4 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). This is an
5 objective inquiry regarding whether there is an appearance of bias, not whether there is bias in
6 fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1992); United States v. Conforte, 624
7 F.2d 869, 881 (9th Cir. 1980); See also In Liteky v. United States, 510 U.S. 540 (1994)
8 (explaining the narrow bases for recusal).

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10 Having reviewed the record, including both of plaintiff's motions and his letter to
11 the clerk, the Court finds that there is no evidence of bias or prejudice against plaintiff or in
12 favor of the defendants in this case. In November 2004, plaintiff, a *pro se* prisoner, filed a
13 complaint, an *in forma pauperis* motion, and a motion for preliminary injunction. Plaintiff has
14 asserted that the medical treatment he was receiving before arriving at McNeil Island has been
15 interrupted, that defendants refuse to provide necessary medical treatment, and that his physical
16 and psychological conditions are worsening. His preliminary injunction motion sought a court
17 order directing defendants to conduct specific examinations and tests. Plaintiff asserts that the
18 length of time this matter has been pending without resolution indicates that Judge Arnold
19 dislikes him and that by failing to provide defendants with complete copies of the complaint and
20 motion, Judge Arnold has prejudiced him.

21 Although the delay in reviewing plaintiff's motion for preliminary injunction is
22 unfortunate, such occurrences are becoming more and more commonplace as the number of
23 cases pending before the judiciary increases and the amount of resources available decreases.
24 Plaintiff's bald assertion that the delay was the result of Judge Arnold's dislike of plaintiff or his
25 case is nothing but speculation. As for plaintiff's allegation of faulty service, the documents are
26 available to all parties via the internet and no prejudice has been shown.

1 Because there is no evidence of bias or prejudice, plaintiff's motions for recusal
2 are DENIED.

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4 DATED this 15th day of September, 2005.

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7 Robert S. Lasnik
8 United States District Judge
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